

U.S. Serial No. 09/761,203

Response to the Office action of September 11, 2007

**Remarks**

The applicants have carefully reviewed the Office action dated September 11, 2007, and the references cited therein. By way of the forgoing amendments, the pending independent claims (1, 27, and 32) have been amended to more clearly recite the invention. In view of the forgoing amendments and the following remarks, all pending claims are patentable over the cited art. Reconsideration is respectfully requested.

As an initial matter, the applicants have reviewed the examiner's comments regarding the examiner interview of April 17, 2007. By way of clarification, the applicants' impression was that an agreement was reached that a warning regarding disk space was different than a disk alert user setting. In other words, a warning regarding disk space did not imply or require that a disk alert user setting must exist because a warning could be preset and non configurable by a user. The applicants regret any confusion that may have been caused by reference to the example regarding disk space instead of recording time. Applicants did not intend to suggest that an agreement had been reached regarding the difference between a disk space alert and a time remaining alert.

The described invention includes an out of disk alert user setting received from a user of a digital video recording device. Contrary to the assertion in the Office action, Kikuchi does not describe an out of disk alert user setting. Even if Kikuchi describes an out of disk alert, a point that the applicants do not concede, Kikuchi does not describe or suggest that the out of disk alert is a user setting. Rather, Kikuchi states "when a free space or area that remains on a medium having a limited storage amount becomes smaller than a predetermined value ... displaying the variable recording rate and the remaining recordable time." (Kikuchi, 3:32-37) (emphasis added). The predetermined value of Kikuchi is not a user setting. Kikuchi describes many settings that are user configurable: recording rate (Kikuchi, 53:42-50), recording mode (Kikuchi, 30:42-45 and 61:19-30), channel to be recorded (Kikuchi, 61:19-30), and programming recording date/time (*Id.*). In contrast to the user settings, Kikuchi describes predetermined values, one of which is the predetermined value used in determining when to display the variable recording rate and the remaining recording time. While describing many user configurable

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parameters, Kikuchi fails to suggest that the predetermined value is user configurable or set. Rather, in light of Kikuchi's description of user configurable settings, it is clear that the predetermined value of Kikuchi is fixed in the recording device (e.g., set in the programming code) and is not user configurable.

The applicants concede that Kikuchi describes variable recording rate that may be set by a user. (Kikuchi, 53:42-50). However, a user specified variable recording rate is not an out of disk alert user setting. The variable recording rate of Kikuchi specifies the average bit that is used for recording content. (*Id.*) In contrast, the out of disk alert user setting allows a user to specify, for example, an amount of recording time remaining for the available storage that should trigger an alert. While a variable recording rate may affect a determination of the remaining recording time, the variable recording does not specify when an out of disk alert should be triggered. Rather, in an example having a variable bit rate setting, the remaining disk space would be divided by the variable bit rate and then compared to an out of disk alert user setting to determine if an out of disk alert should be issued (e.g., an alert should be issued when *remaining disk space / variable recording rate < out of disk alert user setting*). Therefore, even if the variable bit rate is a user setting, the variable bit rate is not an out of disk alert user setting.


Independent claims 1, 27, and 32 recite, *inter alia*, an out of disk alert user setting received from a user of the digital video recording device. As explained above, the art cited in the Office action fails to describe or suggest such a recitation. It is well established that the prior art must at least teach or suggest each of the claim elements to establish a *prima facie* case of obviousness. See *In re Oetiker*, 24 USPQ. 2d 1443, 1446 (Fed. Cir. 1992); *Ex parte Clapp*, 227 USPQ. 972, 973 (Bd. Pat. App. 1985); *In re Royka*, 490 F.2d 981 (CCPA 1974) and M.P.E.P. § 2143. Accordingly, for at least the forgoing reasons, claims 1, 27, and 32 and all claims depending therefrom are in condition for allowance.

Reconsideration of the application and allowance thereof are respectfully requested. If there is any matter that the examiner would like to discuss, the examiner is invited to contact the undersigned representative at the telephone number set forth below.

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Respectfully submitted,

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